SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 23

HAROLD L. ICKES, AS SECRETARY OF THE INTERIOR, PETITIONER

vs.

VIRGINIA-COLORADO DEVELOPMENT CORPORATION

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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[Caption omitted.]

1 In Supreme Court of the District of Columbia

Holding an Equity Court

No. 55221, In Equity

VIRGINIA-COLORADO DEVELOPMENT CORPORATION, PLAINTIFF

v.

RAY LYMAN WILBUR, AS SECRETARY OF THE INTERIOR, DEFENDANT

Bill for mandatory injunction

Filed Jan. 9, 1933

Plaintiff respectfully shows to the court:

1. Plaintiff is a corporation organized under the laws of the State of Virginia, having its home office in the city of Winchester, in said State, and brings this suit in its own right.

2. The defendant is a citizen of the United States, temporarily residing in the District of Columbia, and is sued in his official capacity as Secretary of the Interior.

3. In the month of June 1917, plaintiff, under, pursuant to, and in compliance with an act of Congress approved May 10, 1872, afterwards section 2324 of the Revised Statutes of the United States and now embodied in section 28, title 30, U.S.C.A., located and duly perfected the location of certain oil shale placer claims situated on mineral lands of the United States in the State of Colorado, said claims being known and described as the Mt. Mamm no. 12, $N\frac{1}{2}N\frac{1}{2}$ sec. 1, no. 13, $S\frac{1}{2}N\frac{1}{2}$ sec. 1, no. 14, $N\frac{1}{2}S\frac{1}{2}$ sec. 1, involving no. 15, $S\frac{1}{2}S\frac{1}{2}$ sec. 1, no. 16, $N\frac{1}{2}N\frac{1}{2}$ sec. 12 and no. 17, $S\frac{1}{2}N\frac{1}{2}$ sec. 12, all in T. 8 S., R. 94 W., 6th P.M., oil shale placers, and thereupon the plaintiff became and was the owner of said claims and was vested with the right to the exclusive possession of the same.

4. In and by said section 2324 of the said Revised Statutes of the United States, it is provided that:

"* * * On each claim located after the 10th day of May 1872, and until a patent has been issued therefor, not less than
2 $100 worth of labor shall be performed or improvements made during each year. * * * and upon a failure to comply with these conditions, the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such location."

Plaintiff avers that there was not less than $100 worth of labor per-

formed or improvements made during each year on each of said claims during the period from the time of location thereof, as aforesaid, to and including the year ending July 1, 1930; but that during the year ending July 1, 1931; plaintiff did not perform labor or make improvements of the value of $100 on each of said claims, or any of them, and that it had not resumed work upon said claims, or any of them prior to and including September 4, 1931. and has not since actually resumed work thereon. That on and prior to September 4, 1931, plaintiff intended to resume work on said claims and on said September 4, 1931, plaintiff had made arrangements for the resumption of said work, and would have resumed the same had it not been for the unwarranted action of defendant as hereinafter shown. Plaintiff has never at any time abandoned said claims or any of them or had any intention of abandoning any of said claims; and no charge, allegation, or claim was made in the charge or challenge to plaintiff's title to said claims as hereinafter set forth, or in the said proceedings thereon or thereafter, that plaintiff had abandoned said claims or any of them.

5. On or about the 4th day of September 1931, certain adverse proceedings were initiated by the Department of the Interior, through the General Land Office, against said claims owned and possessed by the plaintiff, as aforesaid, by filing in the General Land Office, certain charge or challenge to the plaintiff's title to and right of plaintiff to the possession of said claims and by posting said challenge on the said claims. Said challenge was based on the sole ground that plaintiff had not performed labor or made improvements on said claims of the value of $100 for each claim, as provided in section 2324 of the Revised Statutes as aforesaid for the year ending July 1, 1931, that is, the plaintiff had not performed, as it is commonly called, "annual assessment work" on said claims for the year ending July 1, 1931, and had not resumed such assessment work prior to September 4, 1931. Said challenge also contained the statement that the United States resumed possession of said land. In said challenge no charge was made that plaintiff's title to, or right of exclusive possession of, its said claims was, or ever had been, invalid, the only charge as above stated being that by its failure to perform the said annual assessment work on said claims during the year ending July 1, 1931, and its failure to resume such work before the institution of said adverse proceedings, the plaintiff had forfeited its said title to and right of exclusive possession of said claims, and that, therefore, said claims were the subject of cancellation.

6. Plaintiff avers that there has been no relocation of said claims, or any of them, by any person or persons since the failure of plaintiff to perform the said so-called annual assessment work
3 on said claims or at any other time or times, nor has any application ever been made by any person or persons to lease said claims or any of them from the United States.

7. The charge or challenge hereinabove mentioned made against said claims by the said Interior Department, as aforesaid, was duly served upon the plaintiff, and plaintiff filed its answer to the same, in which it admitted that it had failed to perform said so-called annual assessment work for the period above mentioned, and alleged, among other things, that the United States could not obtain any valid claim or right to said claims by reason of the failure of the plaintiff to perform said so-called annual assessment work; that such failure did not affect the rights of the plaintiff to said claims in the land covered thereby and that the United States could not deprive the plaintiff of said claims or any of the rights of the plaintiff therein under the mining laws of the United States; and that no contest suit or legal action of any kind had been instituted questioning the ownership of the claims by the plaintiff under the laws under which said claims were initiated. Finally, it was alleged by the plaintiff that notwithstanding the failure to perform said assessment work for the period mentioned plaintiff had the right to retain possession of said claims with all the rights incident thereto under the laws under which said claims were initiated and to resume the performance of annual assessment work thereon at any time prior to a valid subsequent location of said claims and that the United States could not take advantage or secure any right in said land on which said claims were located or declare a forfeiture of plaintiff's rights by reason of said failure to perform said annual assessment work.

8. Proceedings were thereafter had before the Commissioner of the General Land Office, who held that plaintiff's said Mt. Mamm claims, hereinabove described, were null and void, and on appeal to the defendant, the Secretary of the Interior, the decision of the Commissioner of the General Land Office was affirmed by said defendant, the Secretary of the Interior, and thereupon the decision of the Department of the Interior, which was dated July 15, 1932, was promulgated, declaring that the said Mt. Mamm oil shale placer claims were null and void and that the United States had taken possession of the lands within said claims for its own uses and purposes; and plaintiff further says that said decision was in effect a decision that the said claims of the plaintiff were forfeited to the United States.

9. Throughout said proceedings, and particularly before the defendant, the Secretary of the Interior, the plaintiff contended that its title to said claims and its right of exclusive possession thereof under the laws of the United States could not be questioned by the United States or declared null and void, or forfeited to the United States by reason of failure to perform labor or make improvements on said claims to the value of not less than $100 annually on each claim, but that its said title to and right of exclusive possession of said claims be lost only by relocation thereof by some other person or persons before said so-called annual assessment work thereon should be resumed, by the plaintiff; and that therefore there was no justiciable controversy to be adjudicated by the Department of the Interior,

and that said Department and the defendant, the Secretary
4 of the Interior, was without jurisdiction to hear and determine the matter and that the act of the Department and the defendant, in declaring said claims null and void was without any authority of law whatever. And plaintiff also contended before the defendant, the Secretary of the Interior, that the said proceedings hereinabove described, and the action of the Commissioner of the General Land Office in attempting to declare plaintiff's said claims null and void upon the ground of failure to perform said annual assessment work thereon, as hereinabove set forth, deprived the plaintiff of its property in said claims without due process of law, and were, therefore, void.

10. By section 1 of an act of Congress approved February 25, 1920, it is provided that:

"Deposits of coal, phosphate, sodium, oil, oil shale, or gas, and lands containing such deposits owned by the United States, including those in national forests, but excluding lands acquired under the act known as the Appalachian Forest Act, approved March 1, 1911 (Thirty-sixth Statutes, page 961), and those in national parks, and in lands withdrawn or reserved for military or naval uses or purposes, except as hereinafter provided, shall be subject to disposition in the form and manner provided by this act."

And by said act the Secretary of the Interior is authorized to execute leases of the minerals and lands containing minerals described in the portion of said act hereinabove just quoted. Said act, by section 37 thereof, also provides that:

"The deposits of coal, phosphate, sodium, oil, oil shale, and gas, herein referred to, in lands valuable for such minerals, including lands and deposits in Lander, Wyoming, coal entries numbered 18 to 49, inclusive, shall be subject to disposition only in the form and manner provided" in the act, except as to valid claims existent on February 25, 1920, and thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under such laws, including discovery."

Plaintiff avers that its said claims were valid claims existent on February 25, 1920, which fact was admitted in said proceedings had before the Commissioner of the General Land Office and the Secretary of the Interior and has never otherwise been challenged or denied by the defendant, and plaintiff avers that said claims were, after the date of said act of February 25, 1920, commonly known as the leasing act, maintained in compliance with the laws under which they were initiated.

11. Plaintiff further avers that under the laws of the United States, and particularly by virtue of the laws hereinabove quoted from and referred to, its title to, and right to exclusive possession of, said Mt. Mamm claims hereinabove described, could not be questioned by, or lost or forfeited to, the United States by reason of any failure on the part of the plaintiff to perform on said claims the so-called annual assessment work, as above described; but that

said title and rights of the plaintiff in and to said claims could only be lost, if it failed to perform said annual assessment work on said claims, by the bona fide relocation of said claims by some person or persons before a resumption of such annual assessment work on said claims by the plaintiff; and that after such failure to perform said annual assessment work, the plaintiff had the right to resume the performance of such work at any time unless before such resumption some third party made a bona fide relocation of said claims, which said relocation, as hereinabove stated, has never been made or attempted. And plaintiff further says that the performance of said annular assessment work on said claims was not and is not necessary to preserve the rights of the plaintiff in and to said claims with all the incidents of ownership thereof as against the United States, and that so far as the United was and is concerned, a failure on the part of the plaintiff to perform said annual assessment work on said claims was and is without any effect whatsoever.

12. Plaintiff further avers that the Commissioner of the General Land Office and the Secretary of the Interior, in filing the aforesaid challenge to the title and right of the plaintiff in and to said claims on the sole ground of its failure to perform said annual assessment work thereon for the year ending July 1, 1931, and in not resuming such assessment work before September 4, 1931, and in declaring said claims null and void, were acting without jurisdiction in the premises in that under and according to the applicable laws of the United States the only effect of failure to perform the said statutory annual assessment work, so-called, on said claims, as hereinabove set forth, was to make said claims open for relocation; and in the absence of abandonment of said claims by the plaintiff which, as aforesaid, neither occurred nor was charged or claimed to have occurred by the defendants, plaintiff's right to resume such work on said claims until such relocation, remained unimpaired and unaffected and no authority was vested or existed in the defendants to disturb, interfere with, or declare void or forfeited such right, or the rights of the plaintiff in and to the said claims.

13. Plaintiff avers that even if the defendant, the Secretary of the Interior, did have jurisdiction to take the aforesaid proceedings above described and hear and determine the same, as hereinabove set forth, the said action of said defendant in so taking such proceedings and in deciding the same and in declaring the said claims of the plaintiff null and void as aforesaid, was arbitrary, capricious, and wholly unwarranted and unauthorized by law; and that said action of the defendant deprived the plaintiff without due process of law of its property right vested in the plaintiff to resume such delinquent assessment work without penalty for such delinquency until such rights should be foreclosed by a relocation of said claims by another person or persons. And further, that the said hereinabove unwarranted, arbitrary, and unauthorized claims of the defendant as afore-

said has placed a cloud upon the plaintiff's title to and its right of exclusive possession of the said described Mt. Mamm claims, and upon its right to assume said annual assessment work thereon, which said rights had vested in plaintiff and were indefeasible except by relocation by some person or persons after failure to perform said assessment work and before resumption of such work by plaintiff as aforesaid, which cloud should be removed by decree of this honorable court.

6 14. Plaintiff avers that by reason of the aforesaid arbitrary, capricious, and unlawful action of said defendant the plaintiff has been since, to wit, the 4th day of September 1931, and still is, prevented from resuming and unable to resume performance of the said annual assessment work on said Mt. Mamm claims, and has, as aforesaid, been unlawfully deprived of its right to so perform such work, but that it is now ready, willing, and anxious to resume performance of such work, and if its right so to do is restored to it by decree of this honorable court it will resume the performance of such work.

15. Plaintiff avers that unless the arbitrary, capricious, and unlawful acts of the defendant, the Secretary of the Interior, hereinabove fully described and set forth, be vacated and set aside, plaintiff's title to, and right of exclusive possession in and of, said hereinabove described Mt. Mamm claims will be clouded, and may be lost to it forever, and that it will thereby suffer irreparable damage and injury, and that the plaintiff has no adequate remedy at law.

Wherefore, the premises considered, plaintiff prays:

1. That due process issue out of this honorable court directed to the defendant, as Secretary of the Interior, to appear and answer the exigencies of this bill.

2. That this court will pass a decree requiring the defendant by mandatory injunction to vacate and set aside the proceedings hereinabove described in this bill instituted by the said defendant against the said Mt. Mamm claims, and whereby and by reason of which the said Mt. Mamm claims were declared by the defendant Secretary of the Interior null and void; and to vacate and set aside the decision of the defendant, the Secretary of the Interior, dated July 15, 1932, and each and every order issued thereunder, and the promulgation of said decision, declaring the said Mt. Mamm claims null and void.

3. For such other and further relief as to the court may seem meet and proper.

VIRGINIA-COLORADO DEVELOPMENT CORP.,
By LOUIS TITUS, *Attorney.*

LOUIS TITUS,
CHAS. L. FRAILEY,
Attorneys for Plaintiff.

[*Duly sworn to by Louis Titus, jurat omitted in printing.*]

7 In Supreme Court of District of Columbia

Motion to dismiss

Filed Jan. 14, 1933

The defendant moves to dismiss the bill of complaint on the following grounds:

1. The bill is bad in substance in that it fails to state a case entitling plaintiff to the relief sought, or to any relief in equity.

2. The allegations of the bill disclose that the plaintiff has failed and neglected to comply with provisions of law whereby it might have maintained and protected the described placer mining locations which it theretofore possessed, and that during the period of such failure and neglect the Secretary of the Interior, within the intent, purpose, and scope of the lay in such cases made and provided, canceled, discontinued, and forfeited all such possessory mining rights to the United States through due and sufficient process of law.

3. The bill shows on its face that the action of the Secretary of the Interior of which complaint is made was not arbitrary or capricious but was taken after and pursuant to "hearings in the Department in which relator was represented by able and enthusiastic counsel, and further consideration was given the somewhat difficult and complicated question involved." (Henderson v. Lane, 45 L.D. 649.)

4. The United States, which has not in this behalf consented to be sued, is an indispensable party in whose absence the suit cannot proceed.

E. C. FINNEY,
O. H. GRAVES,
Attorneys for Defendant.

In Supreme Court of District of Columbia

Order denying motion to dismiss the bill of complaint and decree for mandatory injunction

Filed March 10, 1933

Upon consideration of the motion of the defendant in the above-entitled cause to dismiss the bill of complaint herein, it is this 10th day of March 1933,

Adjudged, ordered, and decreed that said motion be, and the same hereby is, overruled and denied.

Whereupon the said defendant, Harold L. Ickes, now here in open court having elected to stand upon his said motion to dismiss, and declining to plead further, it is therefore further

Adjudged, ordered, and decreed that the defendant, Harold L. Ickes, Secretary of the Interior, be, and he hereby is, directed to

vacate and set aside the adverse proceedings initiated by the Department of the Interior through the General Land Office in September 1931, described in paragraph 5 of the bill of complaint herein and being a certain challenge or contest no. 13003, serial 1429968, to the plaintiff's oil share placer claims, known and described as the Mt. Mamm no. 12, N½N½ sec. 1, no. 13, S½N½ sec. 1, no. 14, N½S½ sec. 1, no. 15, S½S½ sec. 1, no. 16, N½N½ sec. 12 and no. 17,
8 S½N½ sec. 12, all in township 8 south, range 94 west, sixth principal meridian, oil shale placers, and to set aside and vacate all subsequent proceedings taken and had in said contest, including the decision of the Commissioner of the General Land Office, declaring said placer claims of said plaintiff null and void; and to set aside and vacate all proceedings had and taken in accordance with said decision of said Commissioner; and said defendant is further directed to vacate and set aside his decision dated May 24, 1932, and each and every order issued thereunder, including the promulgation dated July 15, 1932, of said decision, declaring the said above-described placer claims of the plaintiff null and void.

It is further adjudged, ordered, and decreed that the defendant, Harold L. Ickes, Secretary of the Interior, be, and he hereby is, enjoined and restrained from instituting or taking any action or proceeding, interfering with or challenging or otherwise impairing the title of the plaintiff in and to said above-described oil shale placer claims, notwithstanding any failure of said plaintiff to perform the annual labor on said claims required by section 2324 of the Revised Statutes of the United States, for the year ending July 1, 1931, and thereafter.

JOSEPH W. COX, *Justice.*

No objection as to form of above decree.

O. H. GRAVES,
Attorney for Defendant.

Note of appeal

From the foregoing decree the defendant, Harold L. Ickes, Secretary of the Interior, notes an appeal in open court, which is hereby allowed.

JOSEPH W. COX, *Justice.*

In Supreme Court of District of Columbia

Order substituting party defendant

Filed March 10, 1933

Upon motion of the plaintiff in the above-entitled cause, and it appearing to the court that the defendant, Ray Lyman Wilbur, has resigned as Secretary of the Interior of the United States, and that Harold L. Ickes has been duly appointed and confirmed as, and now

is, the Secretary of the Interior of the United States, it is, this 10th day of March 1933, by the court,

Ordered, That Harold L. Ickes, as Secretary of the Interior of the United States, be, and he hereby is made, party defendant in this cause in the place and stead of said Ray Lyman Wilbur.

JOSEPH W. COX, *Justice.*

I consent:

O. H. GRAVES,
Atty. for Harold L. Ickes.

In Supreme Court of District of Columbia

Assignment of errors

Filed March 17, 1933

The defendant, Harold L. Ickes, Secretary of the Interior, by his attorney of record, O. H. Graves, alleges that errors have been committed by the Supreme Court of the District of Columbia in the above-entitled cause, as follows, to wit:

1. The court erred in overruling defendant's motion to dismiss.

2. The court erred in entering its decree in favor of the plaintiff and against the defendant.

3. The court erred in ordering the defendant to vacate and set aside the adverse proceedings initiated by the Department of the Interior through the General Land Office preferring charges against, and challenging the valid existence of, plaintiff's oil-shale placer claims; to vacate and set aside his holding therein that such claims are null and void; and to vacate and set aside all proceedings taken pursuant to such holding.

4. The court erred in enjoining and restraining the defendant from taking action to subject the land on which plaintiff's placer claims had been located, to the purposes of the leasing act, or otherwise to interfere with, challenge, or impair the title claimed by plaintiff, in and to the oil-shale placer claims described in the decree.

HAROLD L. ICKES,
Secretary of the Interior.
By O. H. GRAVES,
His Attorney of Record.

In Supreme Court of District of Columbia

Designation of the record

Filed March 17, 1933

The clerk, in preparing the transcript of the record for the Court of Appeals in this cause, will include the following papers therein:

1. The bill for mandatory injunction.
2. Motion to dismiss.

3. Order for substitution of party defendant.
4. Order denying motion to dismiss the bill of complaint and decree for mandatory injunction.
5. Assignment of errors.
6. This designation.

O. H. GRAVES,
Attorney for Defendant.

Service of a copy of the above designation acknowledged this 13th day of March 1933.

LOUIS TITUS,
CHARLES L. FRAILEY.
Attorneys for Plaintiff.

[*Clerk's certificate to foregoing transcript omitted in printing.*]

10 [File endorsement omitted.]

11 [Minute entry of argument, Nov. 6, 1933, omitted in printing.]

12 In Court of Appeals of the District of Columbia

No. 5956.

HAROLD L. ICKES, AS SECRETARY OF THE INTERIOR, APPELLANT

v.

VIRGINIA-COLORADO DEVELOPMENT CORPORATION

Appeal from the Supreme Court of the District of Columbia

Argued November 6, 1933. Decided January 22, 1934

Nathan R. Margold, Charles Fahy, and Victor H. Wallace, all of Washington, D.C., for appellant.

Louis Titus and Charles L. Frailey, both of Washington, D.C., for appellee.

Before MARTIN, Chief Justice, and ROBB, HITZ, and GRONER, Associate Justices.

Opinion

MARTIN, *Chief Justice:* This is an appeal of the Secretary of the Interior from a decree of mandatory injunction requiring him to vacate a decision promulgated by him whereby certain oil shale placer claims of the appellee were declared to be null and void.

The appellee, The Virginia-Colorado Development Corporation, as plaintiff below and hereinafter called the plaintiff, filed its bill below praying for an injunction against the appellant upon allegations in substance as follows:

That in June 1917, the plaintiff, under the mining laws then in force, located certain oil shale placer claims in Colorado known as the Mt. Mamm, nos. 12 to 17. It was required by the statutes (R.S. secs. 2324, 2325; 30 U.S.C.A. 28, 29), that until a patent was issued for the claims, "not less than one hundred dollars' worth of labor shall be performed or improvements made during each year, * * * and upon a failure to comply with these conditions, the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had been made, provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claims after failure and before such location."

That plaintiff from the time of the location of the claims in 1917, up to and including the year ending July 31, 1930, performed the assessment work of not less than $100 annually as required by the statute, but failed to perform such labor during the year ending July 31, 1931. That this default continued throughout the months of July, August, and part of September 1931, but plaintiff intended on and prior to September 4, 1931, to resume work upon the
13 claims, and had made arrangements to do so, and would have done so, had it not been prevented from performing such labor by the action of the Secretary of the Interior complained of in this case. That the plaintiff never at any time abandoned nor had any intention of abandoning the claims.

That on September 4, 1931, certain adverse proceedings were initiated by the Department of the Interior, through the General Land Office, against plaintiff's claims by the filing in the Land Office and posting on the claims of a challenge to the plaintiff's right and title thereto. This challenge was based solely upon the ground that plaintiff had failed to perform the assessment labor for the year ending July 31, 1931, and had not resumed such labor before the challenge was filed and posted. The challenge stated that the United States had therefore resumed possession of the land within the claims. It was not charged that the plaintiff's right or title to the claims was otherwise invalid, or ever had been so, or that plaintiff had abandoned the claims. It was based upon the sole ground that plaintiff's failure to perform assessment work for the year ending July 31, 1931, and before the filing of the challenge on September 4, 1931, had entitled the Secretary to declare a forfeiture of plaintiff's right and title to the claims and made them subject to cancellation by the Government. No relocation of the claims had been made or attempted by any other person or company during this period, nor had anyone made application to lease the lands from the Government.

That plaintiff contested the proceedings in the General Land Office, but the Commissioner held that plaintiff's claims were null and void, and upon appeal this decision was affirmed by the Secretary of the Interior. That on July 15, 1932, the Department's

decision was promulgated declaring the plaintiff's claims to be null and void, and asserting that the United States had taken possession of the lands within the claims for its own uses and purposes. The plaintiff seasonably objected to all of these purposes.

Thereupon plaintiff filed its bill in equity in the Supreme Court of the District of Columbia in the present case praying for a mandatory injunction requiring the Secretary of the Interior to vacate his decision declaring the plaintiff's claims null and void. The court below granted the decree prayed for, and enjoining the Secretary from taking any action interfering with plaintiff's title to the claims. The Secretary then appealed from this decision.

The question involved in this case is whether the failure of plaintiff to perform the annual assessment labor upon the claims in the year ending July 31, 1931, entitled the Government to declare a forfeiture of the claims and take possession thereof to the exclusion of all rights of the plaintiff. It is conceded by appellant that no such forfeiture was provided for under the Mining Law of May 10, 1872, R.S. secs. 2324, 2325, supra, under which plaintiff had located the claims, but it is contended that under the Leasing Act of February 25, 1920, 41 Stat. 437, such a right was vested in the Government, and the annual performance of labor on such locations was necessary to preserve the possessory right of the locator as against the Government.

We do not agree with this contention.

14 The Secretary's proceedings might be sustained if the present claims were governed by the provisions of the Leasing Act, but section 37 of that act contains a saving clause excepting from its provisions all "valid claims existent at date of the passage of this Act and thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under such laws, including discovery."

It is contended by appellant that the claims now in question, although initiated under the mining laws, were not maintained in compliance therewith; and therefore were not excepted by the proviso from the operation of the Leasing Act. This contention is based upon the failure of the plaintiff to perform the annual labor for the year ending July 31, 1931. Appellant alleges that the plaintiff, consequently, is not entitled to the benefit of the saving clause aforesaid. We cannot agree with this position for the reason, as held by the Supreme Court of the United States with respect to such claims, in Wilbur v. Krushnic (280 U.S. 306, 314 (affirming United States ex rel Krushnic v. West, Secretary of the Interior, 58 App.D.C. 332; 30 F. (2d) 742)), that "prior to the passage of the Leasing Act, annual performance of labor was not necessary to preserve the possessory right, with all the incidents of ownership above stated, as against the United States, but only as against subsequent r[illegible]cators. So far as the Government was concerned, failure to do assessment work for any year was without effect." It follows

that inasumuch as the Government, prior to the passage of the Leasing Act, was without authority to declare a forfeiture of these claims because of the failure of plaintiff to perform the required annual assessment work, and inasmuch as the claims in question were saved out of the operation of the Leasing Act by the proviso above quoted, the action of the Secretary in his challenge of the plaintiff's claims and his resumption thereof for the United States, were without authority of law and were null and void.

It is claimed by appellant that it was error for the lower court to issue a writ of mandatory injunction against the Secretary of the Interior in this case. We are of the opinion that this contention is foreclosed by the decision of the Supreme Court of the United States in Wilbur v. Krushnic, supra. In that case it was held that the lower court possessed authority to issue a writ of mandamus against the Secretary based upon facts similar in principle to those involved in the present case. In view of that conclusion it follows that it was not error for the court in this case to issue a mandatory injunction to afford similar relief based upon similar facts.

The decree of the lower court is therefore affirmed.

A true copy.
Teste:

Clerk, Court of Appeals, D.C.

15 In Court of Appeals of District of Columbia

No. 5956. January Term 1934

HAROLD L. ICKES, SECRETARY OF THE INTERIOR, APPELLANT

vs.

VIRGINIA-COLORADO DEVELOPMENT CORPORATION

Decree

January 22, 1934

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said Supreme Court in this cause be and the same is hereby affirmed.

Per Mr. Chief Justice MARTIN.

JANUARY 22, 1934.

Mr. Justice Van Orsdel took no part in the consideration or decision of this case.

16 In Court of Appeals of District of Columbia

[Title omitted.]

Designation of record

Filed March 26, 1934

The clerk, in the preparation of the transcript of record on petition for certiorari to the Supreme Court of the United States, will include the following, viz:

1. Record.
2. Argument of cause.
3. Opinion.
4. Decree.
5. This designation.
6. Clerk's certificate.

EDWARD T. BURKE,
Special Assistant to Attorney General; 408 Dept. of Justice.

17 [File endorsement omitted.]

18 [Clerk's certificate to foregoing transcript omitted in printing.]

19 Supreme Court of the United States

Order allowing certiorari

Filed May 21, 1934

The petition herein for a writ of certiorari to the Court of Appeals of the District of Columbia granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(Endorsement on cover:) File no. 38,576. District of Columbia, Court of Appeals. Term no. 23. Harold L. Ickes, as Secretary of the Interior, petitioner, vs. Virginia-Colorado Development Corporation. Petition for a writ of certiorari and exhibit thereto. Filed April 19, 1934. File no. 23 of 1934.

U. S. GOVERNMENT PRINTING OFFICE, 1934